

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL DOUGLAS ELROD,

Defendant-Appellant.

UNPUBLISHED

August 8, 2006

No. 260332

Washtenaw Circuit Court

LC No. 04-000476-FH

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his conviction after a jury trial for assault with intent to do great bodily harm less than murder, MCL 750.84. This conviction stems from an altercation between defendant and the victim inside a movie theater. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction, specifically arguing that the prosecutor did not prove that defendant intended to do great bodily harm less than murder or that defendant did not act in self-defense. We disagree. The standard of review for sufficiency of the evidence claims in criminal cases is “whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding” that all the elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

An intent to do great bodily harm has been defined as “an intent to do serious injury of an aggravated nature.” *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), quoting *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). Intent can be proven by inferences from any fact in evidence. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). “Because the law recognizes the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient to sustain a conclusion that a defendant entertained the requisite intent.” *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

There was sufficient evidence adduced of defendant’s intent to do great bodily harm. Before the fight began, the victim and defendant’s wife both testified that defendant made a comment about beating up the victim. The victim testified that defendant then punched him in the throat and continued to punch him even after the victim had fallen over a row of chairs. Further, the victim and his wife testified that defendant later kicked the victim down a stairway

in the movie theater. This fall caused the victim to suffer several fractured ribs and a punctured lung, which eventually collapsed. Defendant was hospitalized for nine days following the attack. This evidence was sufficient for the jury to conclude that defendant assaulted the victim with the intent to inflict great bodily harm. Although defendant testified that the victim started the fight and denied kicking the victim down the stairway, the jury, not this Court, is to weigh and determine credibility of witnesses. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

There was also sufficient evidence that defendant did not act in self-defense. A claim of self-defense requires that the defendant acted in response to an assault. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). Again, the victim and his wife both testified that defendant punched the victim first and kicked the victim down the stairway after the initial confrontation appeared to have ended. Defendant argues that this testimony cannot support his conviction because it differs from his testimony and that of his wife. However, a reviewing court may not interfere with the jury's role in determining credibility of witnesses and weighing the evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992). The jury apparently believed the victim's and his wife's testimony, and we will not interfere with that determination on appeal.

Defendant also argues that the trial court abused its discretion by allowing photographs of the victim to be admitted into evidence. We disagree. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

"Photographs are admissible if they are pertinent, relevant, competent and material on any issue in the case." *People v Curry*, 175 Mich App 33, 46; 437 NW2d 310 (1989). Evidence of the victim's injuries is admissible as evidence of a defendant's intent. *People v Howard*, 226 Mich App 528, 550; 575 NW2d 16 (1997). A photograph is not inadmissible because it depicts information that a witness can orally testify to, and photographs may be used to corroborate a witness' testimony. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909, modified on other grounds 450 Mich 1212; 539 NW2d 504 (1995). Additionally, "if a photograph is otherwise admissible for a proper purpose, it is not rendered inadmissible merely because it brings vividly to the jurors the details of a gruesome or shocking accident or crime, even though they may tend to arouse the passion or prejudice of the jurors." *Id.* at 77.

The photographs admitted in this case showed the victim after the fight and depicted his facial injuries. Although the photographs show some blood on the victim's face, they are not overly gruesome or shocking. They were also relevant to the case, as defendant was attempting to argue that he did not intend to commit great bodily harm and argued that he acted in self-defense. The photographs were helpful to show the extent of the victim's injuries and, when viewed in comparison to a picture of defendant taken that night, helped to negate defendant's

theory that he acted in self-defense. Defendant has not shown that the trial court abused its discretion by allowing the admission of the photographs.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot